



IAC-FH-AR-VI

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/10111/2015

THE IMMIGRATION ACTS

Heard at Field House
On 23 February 2016

Decision & Reasons Promulgated
On 8 March 2016

Before

Upper Tribunal Judge
John FREEMAN

Between

B B
(TEMPORARY ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: *Daniel Sills*, counsel instructed by J D Spicer Zeb Solicitors
For the respondent: Mr Nigel Bramble

DECISION AND REASONS

This is an appeal by an appellant born on [-], a citizen of Albania from the Gypsy Jevg tribe who also claims to have been involved in a blood feud. He appeals the decision of Judge Paul Housego, sitting at Hatton Cross on 12 November 2015, dismissing his appeal against a decision of 1 July 2015 refusing him asylum and granting him leave to remain only until 20 August when he reached the age of 17½. The judge accepted the appellant's account of leaving Albania on his own passport with a man who was the bearer of a notarized authorization from his legal guardians to take him out of the country.

2. Permission to appeal was sought on the basis that the judge did not make adequate allowance on credibility for the appellant's being a minor, acting under control of an agent. Several particulars of that were given in the grounds, although not referred to in the grant. The only one with which I need deal is referred to at ground 7, and it deals with paragraph 97 of the judge's decision, where the judge held against the appellant what he said was his failure to produce a death certificate for [AK], who was a member of the opposing clan, whom the appellant said had been killed by his uncle, more or less in self-defence, in the course of a quarrel, leading to a blood feud between the two clans.
3. What the judge said about that was this, referring to *TK (Burundi)* [2009] EWCA Civ 40, which was a decision about evidence that might reasonably be expected to be called, but on totally different facts.

“This is said to be a blood feud following a violent death in a public place of a person said to be of a wealthy and well connected family. There is no doubt that such a death would be registered. Albania has a proper record system (for example the information about the departure of the appellant). There has been no attempt to obtain a death certificate which would either result in such a certificate or evidence that one could not be obtained. This affects my view of the credibility of the evidence.”
4. There are a number of problems with that passage. The one relied on by Mr Sills is simply the age of the appellant. There is no basis for saying that he could reasonably be expected to have brought a death certificate for somebody who is an enemy of his family out of Albania with him, and he was not questioned about the existence of one at interview; nor was the point taken in the refusal letter. If any of those things had happened, then he has had experienced specialist solicitors acting for him, and his age would not have mattered, because they could have been expected to make those enquiries; but this is not the case.
5. So it seems to me that the judge's reliance on the absence of a death certificate was an error of law in the circumstances, particularly because there was no evidence before him to support his finding about the proper record system in Albania, except for the information about the appellant's departure which was of another kind.

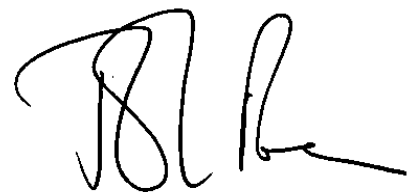
6. The question is whether the judge's error on this point was a material one. Mr Bramble has argued that it was not, relying on the country guidance case of *EH* (blood feuds) Albania CG [2012] UKUT 348 (IAC), which was cited at length by the judge at paragraph 32 of his decision. The relevant paragraph of the judicial head-note is (vii): "In order to establish that there is an active blood feud affecting him personally an appellant must produce satisfactory individual evidence of its existence in relation to him." Various examples are then given, although there is no particular reference to death certificates.
7. If the judge had linked his reasoning in his decision to what was said in *EH* and gone through the evidence which might reasonably have been available in the circumstances, and decided against the appellant on that basis, then nothing could have been said against his decision; but that is not what he did.
8. Then Mr Bramble says this was not necessarily a crucial finding in any case: certainly not every point on which a judge takes adverse notice of an appellant's account is likely to be crucial to credibility. However, where this paragraph appeared was at the end of what was in fact the judge's discussing of the evidence although it comes immediately before the short final passage headed "Discussion and Conclusion". The judge's findings on the death certificate ended specifically with the words "This affects my view of the credibility of the evidence" and it does not seem possible to me to say that it was other than a material error.

Notice of Decision

9. Both parties are agreed that the result in these circumstances can only be a fresh hearing, which will take place in the First-tier Tribunal, not before Judge Housego.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

The appellant is granted anonymity until the decision on the further hearing directed, when it will be for the judge to decide whether or not it should be continued. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.



(a judge of the Upper Tribunal)
07 February 2017